

JUN 29 2010

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NUMBER: 09/882,703

FILING OR 371 (c) Date: 06/14/2001

IN re Application of Heinrich Foltz, et al.

## RENEWED PETITION UNDER 37 CFR 1.137(b)

Counsel of Record thanks the Office for the careful consideration given to the above referenced application. In the correspondence, dated May 3, 2010, the Office dismisses our Petition to Revive under 37 C.F.R. 1.137 (b). In view of the following information we respectfully request the office to reconsider.

We believe that after the Director reviews the facts of the case it will conclude that the delay was unintentional. It was an accumulation of circumstances that at a given point in time where unavoidable by the interested parties thus causing the unintentional delay.

When Counsel received the office action back in 2005 he forwarded it to Mr. Shooshtari for his review. On October of 2005, I approached Mr. Shooshtari and asked him if he had any comments and he stated that he needed to see Dr. Foltz (the other inventor) for his input. I explained that we could extend the period of time and that we had some time to file the answer. Back in December of 2005, I approached Mr. Shooshtari again and he explained that he had not been able to contact Dr. Foltz. I informed him that we could always file a petition to revive and to continue looking for Dr. Foltz so we could get his input on the Office Action. I began drafting a response to the office but I was never comfortable on my prior art analysis.

During that same period of time Mr. Shooshtari's mother became very ill in Iran. For the following eighteen months he was constantly traveling to Iran. He took the family lead on his mother's treatment and was the family member that coordinated all issues with the doctors and family members. I know this because Mr. Shooshtari and his family are very close friends with my family and me. I personally saw Mr. Shooshtari's ordeal with all his trips to Iran and juggling his business matters. I heard directly from him and from his wife the stress that he was under. His constant traveling to Iran and dealing with his business issues took a toll on his time.

Nevertheless, we both insisted in locating Dr. Foltz. Around the same time I took the Office action to the University of Pan American, and left it with a hand written note at Dr. Foltz department since he was out of his office. It wasn't until almost two years later that I found out that Dr. Foltz had never received the package. I was under the assumption that Dr. Foltz received the package and I never followed up, as I should have.

On May 2007, our office was burglarized. Attached to this as exhibit "B" you will find a copy of the Police Report. As a result of this break-in all of our files were taken out of file cabinets and our docketing system was lost. On or about January 2008, during our manual docketing system review my office realized that Mr. Shooshtari's file (among a handful of others) had not been accounted for. We searched the office and found the file

we originally had requested from the Patent Office. But, all my notes, new drawings and my personal research were lost. At that time we started putting the file back together from a copy that we found on a previous file wrapper that we had requested from the Patent and Trademark Office some time in the past. I began drafting another response and got in a bind regarding my analysis of the prior art. I contacted Mr. Shooshtari and he explained that he was dealing with personal problems and as soon as he returned from Iran he would locate Dr. Foltz.

On June 2008, Mr. Shooshtari contacted me and told me that he had come across Dr. Foltz at a Supermarket. Dr. Foltz explained that he was no longer a professor and was the Chair of the department. He also mentioned that he could work with us during the summer break since his very busy schedule prevented him of any spare time during the semester. We met during the first week of June 2008 and I gave Dr. Foltz a copy of the Office action.

Towards the end of the summer Dr. Foltz gave me his comments regarding the Office Action. I then reviewed Dr. Foltz proposed answer and I was not comfortable with his claim amendments. I believed they limited the scope of the application. Attached as exhibit "A" you will find Dr. Foltz comments on the application. I then began doing some additional technical research myself and began drafting what I considered a more thorough answer. On August 2008, I contacted a draftsman and I requested the correction to the drawings as specified in the Office action.

It took me almost six months to find a consultant to help me with the prior art analysis. Once I got a clear understanding of the prior art with Dr. Foltz comments, Mr. Shooshtari's comments and some outside help I began writing my final draft to the proposed answer.

Unfortunately, I got into a bicycle accident on March 2009 and I returned to work until June 2009. At that time, I began to look for a consultant who would help me with the Office action. We worked diligently until we completed the draft on September 2009. During this time all parties involved in the application were in constant contact with each other. I should note that during this period of time I was forced to change my email address three times. It went from anthony@matulewicz.com, to anthonym@matulewicz.com, to anth@matulewicz.com. This also explains the unintentional lack of communication between Dr. Foltz and myself.

I completed the final answer to the Office action on September 2009. I forwarded a copy of the Action for review to Mr. Shooshtari and Dr. Foltz. They all agreed with the response and I then filed the answer with the petition to revive.

Please note that we never intended to abandon the application. We always felt we had patentable matter. Unfortunately, all these mentioned circumstances Dr. Foltz's change of position, Mr. Shooshtari's mother's long agony in Iran, my bicycle accident and burglary of my office all interfered in our coordination to file the most accurate response and caused the unintentional delay. I apologize for any inconvenience that this generates.

Also, note that because of the friendship between Mr. Shooshtari and myself we never worked on a formal basis. All of our communications were either by phone or at lunch meetings. The only written communications that we have are Dr. Foltz's comments on the Office Action.

There was never a deliberate course of action on our part to abandon the application. The entire delay was unintentional. We have reviewed the case law the Office sent us and we believe we do not fall in any of those categories. First of all, we always considered the claim to be patentable. Secondly, we understand that protracted delay in seeking revival undercuts assertion of unintentional delay. *See New York University v. Autodesk*, 2007 U.S. DIST LEXIS, U.S. District LEXIS 50832, \*10 - \*12 (S.D.N.Y. 2007) unlike that action, we are giving a full explanation of what circumstances hindered a prompt response. It was an unusual set of circumstances that led to the unintentional delay. The best proof is that once all the parties were working together with no "extraordinary" circumstances the response to the Office action was accomplished.

Also, please note that we have provided the only written correspondence on this matter. Mr. Shooshtari's office was half a block from where mine was. All of our communications were verbal. They were in person or by phone. Neither of us kept a log of our conversations.

We could have definitely taken actions to avoid the abandonment. However, we never intended to abandon the application. Obviously, looking in hindsight we could have done a number of things to avoid this from happening. All parties have taken all the appropriate steps to avoid this from happening again.

Again, we believe we have met our burden to show that the abandonment was unintentional due to a set of unfortunate and unavoidable events. We pray that the Office considers our Petition and REVIVES the application.

Respectfully Submitted,

  
Anthony Matulewicz

# EXHIBIT

## “A”

Item 7. The examiner rejected Claims 1-5 and 8 as being anticipated by Munson (USP 4,719,470), Figure 5. We thank the examiner for bringing this prior art to our attention. As described below, we feel that our invention is clearly different from that of Munson in both its geometry and its mode of operation; however, we acknowledge that the wording of our claims as originally submitted does not make the differences sufficiently clear. We propose additional wording to clearly distinguish our invention from the antenna disclosed by Munson.

With respect to claim 1, the antenna we disclosed differs substantially from those disclosed by Munson both in geometry and in mode of operation. Our claim 1, as originally written, required

“(b) Two conducting patches on one side of said dielectric substrate”

Munson's Figure 5 is a group of four dipoles forming an array. Figure 5 clearly shows the patches within *each* dipole element being on *opposite* sides of the substrate. There are additional patches on the same side, but they are parts of entirely *separate* dipole elements. Our claim 1 is for a dipole element, not an array of dipole elements. This leads to a substantially different mode of operation: in Munson the feed is unbalanced while in our invention it is balanced. We propose additional wording to clarify that the patches are at opposite ends of the same, single dipole element.

Second, our claim 1 required

“(c) a conducting strip, narrower than the patches, connecting the two said conducting patches, with a feed point at the center”

Munson's Figure 5 contains a conducting strip (16), with a feed point at the center (18). However, this entire structure is part of a microstrip transmission line over a ground plane, which does not radiate significantly, and is not part of the dipole element structure.

Our claim 1 is for a dipole element, and is the main radiating component. The use and application of the conducting strip are completely different. We propose addition of the words "forming a radiating part of the dipole element" to make this distinction clear.

Third, our claim (1) required

"(d) Slots cut into said conducting patches to effectively extend the length of the said conducting strip,"

The examiner refers to Col. 7, Line 57 of Munson as anticipating this feature. We respectfully suggest that the slots referred to in Col. 7, Line 57, are not cut into the patches, but instead into the ground plane, and furthermore are being used to radiate and increase the bandwidth, rather than to extend the length of the conducting strip.

Fourth, our claim (1) required

"(e) A second conducting strip on the reverse side of said dielectric substrate, forming a parallel strip transmission line with said conducting strip and connected to said conducting patches through the use of via holes in said dielectric substrate."

The examiner refers to Col. 5, Line 47 and item (22) as anticipating this feature. Munson refers to item (22) as a reflective conductive surface, and the figures clearly show it as an entire ground plane rather than part of a dipole element. Again, we note that our claim is for a part of a dipole element. Also, our strip is *electrically* connected, in Munson the plane is merely in proximity. We propose to make this distinction clear by changing connected to "electrically connected" and "via holes" to "conducting vias".

With respect to claim 2, we acknowledge that if the reference to our claim 1 was not made, the description is too broad to distinguish it from prior art. The intent was to show that the one half of the element from claim 1 could be operated as a monopole. We propose improved wording of claim 2 to make this clear.

With respect to claims 3 and 4, we note our use of the word "parasitic", and note that all of the elements disclosed in Munson are driven elements rather than parasitic elements. We believe that this is sufficient to distinguish them from anything taught in Munson. However, we propose rewording of claims 3 and 4 similar to that proposed for claims 1 and 2, for further clarification.

We accept the examiner's objections to claims 5, 7, and 8, propose to withdraw claims 5, 7, and 8 entirely. We propose to retain the discussion and figures of these possible applications in our description as useful examples of how the invention of claims 1-4 could be applied in practice.

Item 8. The examiner states that claims 6 and 7 are anticipated by Bishop (USP. 6,337,666), Figures 6 and 7, disclosing a broadside array. We respectfully suggest that both of these figures disclose single elements, rather than a broadside array. Nevertheless, we propose to withdraw claim 6 because of its similarity to claims 5,7, and 8 which are also being withdrawn.

# EXHIBIT

## “B”



MCALLEN POLICE DEPARTMENT  
MAIN MENU

Date: 06/28/2010

User: MCPD7155

Page: 1

Case Description:  
Burglary (Hab/Bldg)

Case Number: 2007-00043933

Primary Victim: MATULEWICZ,ANTHONY,,

Date/Time Reported: 05/07/07 8:16 Hrs.

Dispatch Incident Type:

Date/Time Occurred: 05/06/07 22:30 Hrs.

BURG OF HA

Date/Time Between : 05/06/07 22:35 Hrs.

Location Occurred : 521 S BROADWAY ST

Area: MC

Section: RD611

Grid:

Reporting Officer : 6964 CASTELLANO,HERBERT,,

Primary Unit Assigned to Investigate: Burglary

Assigned Investigators:

05/10/07 5112 COLON,OSCAR,,

Case Status: Open

Disposition: Suspended

Disp. Date: 08/20/07

No. of Offenses: 1

No. of Offenders:

No. of Victims: 1

Offense Number: 1

Attempted/Committed : Committed

Crime Code: 00220 BURGLARY - HAB/BUILDING

Statute . : PC 30.02(c)(1)

Stat Desc : BURG OF BUILDING - SJ

Location Type . : Com/Office

Criminal Activity . :

Type of Weapon : Unknown

Weapon Feature . . :

# Adults Present: 1

# Juveniles Present :

Statute ORI/Group . : S

Agg Aslt/Homc Crmst:

Counts . . . . . : 001

Larceny/Theft Offnse:

Offense Date . . . : 05/06/2007

Victim Drug Related :

Abandoned Structure : NO

Property Damage . .

UCR Return A . . . : Burg Force

UCR Stolen Property : BurgNonNgt

## SUBJECTS:

Victim . . : Present Information

Primary MATULEWICZ,ANTHONY,,

Individual 106 E TULIP

MCALLEN

TX

78504

Race : White

Sex: Male

D.O.B: 05/15/64 Age: 46

Hgt : 6'04"

Wgt: 290

Hair: Brown

Age at Occurrence : 42

Build:

Complexion:

Eyes . . : Brown

Ethnicity: NH

## School/Business Information:

CARTER AND BURGERS

Phone:

200 S 10TH

MCALLEN

TX

Statement Type :

Related Offenses : 1

MCALLEN POLICE DEPARTMENT  
MAIN MENU

Date: 06/28/2010

User: MCPD7155

Page: 2

Case Number: 2007-00043933

Case Description:  
Burglary (Hab/Bldg)

Property: MATULEWICZ,ANTHONY,,

Item Number . : 1 Subject #: 1 Subject Type: Victim  
Property Code : Stolen Property Type : Other  
Property Class: Firearms  
Date Received : 05/07/07 Initial Value : 400.00  
Date Recovered: Recovered Value: .00  
RFOJ?: N Notify Owner Date: Notified How?:  
Prp Loc . . . : Bin : Disp/Date:

Year/Desc . : 0000 TERRACE REVOLVER  
Quantity . : 1.000 EA Model/Style:  
Registratn# : State : Expires :  
Serial # . : OAN . . :  
Subjects . : MATULEWICZ,ANTHONY,, Reason: Owner

Property: MATULEWICZ,ANTHONY,,

Item Number . : 2 Subject #: 1 Subject Type: Victim  
Property Code : Stolen Property Type : Rad/TV/VCR  
Property Class: TV/Rads  
Date Received : 05/07/07 Initial Value : 500.00  
Date Recovered: Recovered Value: .00  
RFOJ?: N Notify Owner Date: Notified How?:  
Prp Loc . . . : Bin : Disp/Date:

Year/Desc . : 0000 MAGNAVOX 27" FLAT SCREEN  
Quantity . : 1.000 EA Model/Style:  
Registratn# : State : Expires :  
Subjects . : MATULEWICZ,ANTHONY,, Reason: Owner

Property: MATULEWICZ,ANTHONY,,

Item Number . : 3 Subject #: 1 Subject Type: Victim  
Property Code : Stolen Property Type : Consumer G  
Property Class: Consumable  
Date Received : 05/07/07 Initial Value : 70.00  
Date Recovered: Recovered Value: .00  
RFOJ?: N Notify Owner Date: Notified How?:  
Prp Loc . . . : Bin : Disp/Date:

Year/Desc . : 0000 BUCHANANS SCOTCH WHISKY  
Quantity . : 1.000 EA Model/Style:  
Registratn# : State : Expires :  
Subjects . : MATULEWICZ,ANTHONY,, Reason: Owner

Description: Incident Report Summary  
SUSPECT(S) BROKE INTO THE BUILDING AND STOLE THE VICTIMS PROPERTY.

State of Texas                    )  
  )  
Hidalgo County                   )  
  )

**AFFIDAVIT OF JEFF SHOOSHTARI**

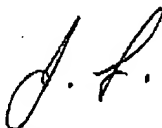
My name is Jeff Shooshtari, I am one of the inventor on Patent Application No. 09/882,703 and I am also the President and CEO of the Assignee of the Referenced application.

In Support of our statement that we never intended to abandoned this application I state the following:

On July 9, 2005 we receive a Reply from the Office and are given a shortened statutory period for response. I review the request from the Office and I realize that I need the help of the other inventor Dr. Heinrich Foltz to help us with the office action. At that time Dr. Foltz was a full time faculty member at the University Of Texas Pan American. I forward the request to him about September 2005. During that period of time Dr. Foltz is made the Chairman of the Department of Electrical Engineering. His schedule become one that it was impossible to locate him. It seems that with Dr. Foltz change of job position consumed almost all of his time. During the same period of time my mother become extremely ill and I had to constantly fly to Iran. Counsel and myself try to contact Dr. Foltz but neither of us had look locating him.

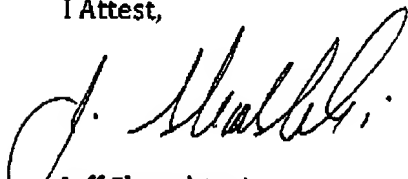
Finally one day I come across Dr. Foltz at a supermarket. This was on June 2008. I explain my frustration for not locating him and shortly alter we set up a meeting with Counsel. Dr. Foltz reviews the application and gives the comments to counsel shortly thereafter.

Counsel was not comfortable with Dr. Foltz comments. He decides to hire a third person to help him better understand the invention. Because of Dr. Foltz commitments at the faculty it is impossible to get both of them to coordinate agenda. We determine that Dr. Foltz comments are good enough as our support for the response. We then hire an electrical engineer to help him further with the response and help us differentiate the prior art. During that period Counsel is on an accident and he is in a three-month recovery period. After that Counsel drafted the response for the office action using Dr. Foltz comments as the roadmap for the response. I forwarded a copy of the Draft to Dr. Foltz (by this time all of us where working diligently on this patent). Dr. Foltz reviews. After his review awe file what we feel is a complete Response wit the petition to revive.

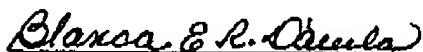


I understand that it was a long time to file the answer. However, it was never my intention or anybody else to abandon the application. At all times we felt we had patentable subject matter. It was just that when it was not one thing it was the other. We had an unfortunate set of circumstances that caused this situation.

I Attest,

  
Jeff Shooshtari

Sworn before me this 21st of June 2010.



Notary Public for the State Of Texas

My commission expires on: April 13, 2013

